

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**ROBERT C. GODFREY,** }  
Plaintiff, }  
v. }      **Case No.: 2:11-CV-02570-JEO**  
**BIG LOTS STORES, INC.,** }  
**Defendant.** }

**MEMORANDUM OF OPINION AND ORDER**

The Magistrate Judge filed a Report and Recommendation (Doc. # 16) on September 26, 2011, recommending that Defendant's Motion to Dismiss (Doc. # 3), seeking the dismissal of two of Plaintiff's claims, be granted. The Magistrate Judge recommended that Plaintiff's claim under Alabama Code § 21-7-1 be dismissed with prejudice because that statute does not create a private cause of action, and that Plaintiff's outrage claim be dismissed without prejudice. The parties were advised of their right to file specific written objections within fifteen (15) days, and Defendant filed objections to the Report and Recommendation. (Doc. # 17).

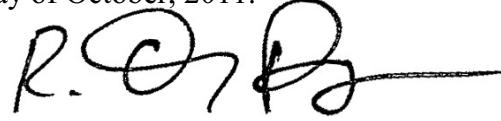
Having carefully reviewed and considered *de novo* all the materials in the court file, including the Report and Recommendation and Defendant's objections, the court is of the opinion that the Magistrate Judge's Report is due to be and hereby is **ADOPTED** and the Recommendation is **ACCEPTED.**<sup>1</sup> Accordingly, it is hereby **ORDERED, ADJUDGED and DECREED** that Plaintiff's

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<sup>1</sup> Although Defendant asks that the dismissal of the outrage claim be with prejudice, rather than without, dismissal without prejudice of an initial complaint is the more appropriate course of action. *See generally Arundar v. DeKalb County Sch. Dist.*, 620 F.2d 493, 494-95 (5th Cir.1980) (affirming district court's dismissal of complaint under Rule 12(b)(6) for failure to state a claim, but modifying judgment so as to make dismissal without, rather than with, prejudice, because "sanction of dismissal with prejudice" [was] "too harsh a penalty under [the] circumstances."). Again, the

claim under Alabama Code § 21-7-1 is **DISMISSED WITH PREJUDICE**, and that Plaintiff's outrage claim be **DISMISSED WITHOUT PREJUDICE**.

**DONE** and **ORDERED** this 18th day of October, 2011.



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**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE

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dismissal of the outrage claim here is based upon a failure to state a claim.